

SHARON RAE COOK

IBLA 74-181

Decided June 14, 1974

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying reinstatement of oil and gas lease NM-A 12576 (Okla.), terminated by operation of law for failure to pay annual rental on or before anniversary date of lease.

Reversed.

Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

Where appellant mailed rental payment for oil and gas lease in sufficient time for it to arrive in the proper BLM office on or before due date, considering distance involved and normal delays attendant upon collection, transmittal, and delivery of mail, she came within ambit of provisions in 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) for reinstatement of lease when failure to timely pay rental is "not due to a lack of reasonable diligence on the part of the lessee."

Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

Where appellant mailed oil and gas lease rental payment, due on or before November 1, from Los Angeles, California on October 30 to Santa Fe, New Mexico Office, late payment was not due to a lack of reasonable diligence on appellant's part.

APPEARANCE: Sharon Rae Cook, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The annual rental payment for appellant's oil and gas lease was due in the Bureau of Land Management State Office at Santa Fe,

New Mexico, on the lease anniversary date of November 1, 1973, but did not arrive until November 2, 1973. The payment traveled from Los Angeles, California to Santa Fe via air mail in an envelope postmarked "October 30, 1973, p.m."

In accordance with the provisions of 30 U.S.C. § 188(b) (1970), appellant's lease automatically terminated by operation of law when payment failed to arrive at the Santa Fe Office on or before November 1. The State Office denied appellant's request for reinstatement of the lease. This appeal ensued.

Having considered the distance involved and the normal delays attendant upon collection, transmittal, and delivery of mail, this Board is of the opinion that appellant did mail her payment in sufficient time for it to have arrived in the State Office on the due date, but that the payment was delivered late in Santa Fe for unexplained reasons. Therefore, we conclude that appellant's case comes within the ambit of provisions in 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) for reinstatement when failure to timely pay is "not due to a lack of reasonable diligence on the part of the lessee." R. G. Price, 8 IBLA 290 (1972).

Appellant has expressed concern over the disposition of the payment of rental which she submitted with the petition for reinstatement of oil and gas lease NM-A 12576 (Okla.). Under Departmental procedures, such a payment is retained by BLM in an unearned account until final disposition of the appeal, as no appeal, such as this, can be maintained without money for the rental on deposit. Following this decision, the payment will be applied as rental for the lease year ending October 3, 1974.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the State Office decision is reversed and the case is remanded to the Bureau of Land Management for appropriate action consistent with this decision.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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